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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/806,592	03/23/2004	Peter Collier	1367-28	2443
7590 08/04/2008				
Thomas M. Galgano, Esq. GALGANO & ASSOCIATES, PLLC Suite 204 20 W. Park Ave., LONG BEACH, NY 11561				
EXAMINER				
SPAHN, GAY				
ART UNIT		PAPER NUMBER		
3635				
MAIL DATE		DELIVERY MODE		
08/04/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## **MISCELLANEOUS LETTER**

### ***Response to Amendment***

The Preliminary Amendment (i.e., entitled "Supplemental Amendment and Reply to Election/Restriction Requirement" by Applicant) filed on June 26, 2008, (certificate of mailing June 24, 2008), was not entered because entry of the amendment would unduly interfere with the preparation of the Office action. See 37 CFR 1.115(b). The examiner spent a significant amount of time on the preparation of an Office Action before the Preliminary Amendment was received. On the date of receipt of the Preliminary Amendment, the examiner had completed the claim analysis and the search of prior art of all pending claims as well as the drafting of the Office action.

Furthermore, entry of the Preliminary Amendment would require significant additional time on the preparation of the Office action. Specifically, entry of the Preliminary Amendment would require the examiner to conduct a further prior art search in the same classification area or another classification area that was not previously searched and required as well as revise the Office Action extensively to address the new issues raised in the Preliminary Amendment by submission of newly added claims and claim language.

The examiner had begun drafting the Office Action prior to the Preliminary Amendment submittal of June 26, 2008. The Office Action was completed by the examiner on July 4, 2008 and was waiting for mailing of the Office Action prior to the Preliminary Amendment being forwarded to the examiner's docket.

Although the Preliminary Amendment was submitted prior to the mailing date of the action, a Preliminary Amendment may be disapproved if it unduly interferes with the preparation of a first Office Action as per 37 CFR 1.115 (b), MPEP 714.01(e)(IV)(B)(1) &(2) and MPEP 714.19(p). A response to the initial Office Action of July 09, 2008 must be made prior to the 6 month statutory response date with any appropriate extension fees to avoid abandonment of the case.

A responsive reply (under 37 CFR 1.111 or 37 CFR 1.113 as appropriate) to the Office Action mailed July 09, 2008 must be timely filed to avoid abandonment.

Applicant may wish to resubmit the amendment along with a responsive reply under 37 CFR 1.111 to ensure proper entry of the amendment.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gay Ann Spahn whose telephone number is (571)272-7731. The examiner can normally be reached on Monday through Friday, 10:30 am to 7:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard E. Chilcot can be reached on (571)-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3635

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gay Ann Spahn/  
Gay Ann Spahn, Primary Examiner  
July 31, 2008